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UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

- - - - - X                      18-CV-0695  
PATRICIA J. CURTO,  
                                 Plaintiff  
  
                                 Vs.                      Buffalo, New York  
ERIE COUNTY WATER AUTHORITY,                      October 26, 2022  
                                 Defendant  
- - - - - X

TRANSCRIPT OF ORAL ARGUMENT  
BEFORE THE HONORABLE JEREMIAH J. MCCARTHY  
UNITED STATES MAGISTRATE JUDGE

PATRICIA J. CURTO  
20 Hazel Court  
West Seneca, New York 14224  
Appearing Pro Se  
  
GOLDBERG SEGALLA LLP  
BY: JAMES D. MACRI, ESQ.  
665 Main Street  
Suite 400  
Buffalo, New York 14203  
Appearing on behalf of the Defendant

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Rochester, New York 14614

1 THE CLERK: All rise.

2 THE COURT: Good afternoon. Please be  
3 seated.

4 THE CLERK: On the record in civil  
5 proceeding 18-CV-695, Curto V Erie County Water  
6 Authority for oral argument. Present in the courtroom  
7 are plaintiff Patricia Curto, attorney James Macri for  
8 defendant. The Honorable Jeremiah J. McCarthy  
9 presiding.

10 THE COURT: Um, good afternoon, again.

11 MR. MACRI: Good afternoon.

12 THE COURT: And we have the Water  
13 Authority's motion for summary judgment which will be  
14 argued this afternoon. Both of you can remain at the  
15 table if you wish or you can come up to the podium,  
16 whichever you prefer. Okay? And I have reviewed the  
17 papers carefully and I will be reviewing them again,  
18 but with that, um, I'll hear from both of you.

19 MR. MACRI: Good afternoon, Your Honor.  
20 James Macri Goldberg Segalla on behalf of defendant  
21 Erie County Water Authority. May it please the Court,  
22 this is our motion for summary judgment. Despite  
23 repeated claims of dismissed claims such as  
24 discrimination and over charge, as this Court is well  
25 aware, this case involves three remaining claims, um,

1 a violation of procedural due process, an alleged  
2 taking under the constitution and a trespass under New  
3 York State law.

4 As explained in our motion papers -- our  
5 moving papers and our reply papers, each of Ms.  
6 Curto's claims fail, and in opposition, she failed to  
7 raise a triable issue of fact for summary judgment,  
8 but in essence, this case boils down to a few key  
9 facts. Pursuant to the Erie County Water Authority  
10 act, the Water Authority has granted um a number of  
11 powers and rights including the right to enter onto  
12 property to inspect, repair and maintain its own  
13 equipment.

14 Those rights and more are further granted  
15 through the Erie County Water Authority tariff that's  
16 been in effect since 1953 and which Ms. Curto  
17 expressly agreed to be subject to pursuant to her 2006  
18 application for water service. Um, numerous sections  
19 of the tariff provide that the Water Authority has the  
20 right to enter onto property to repair or replace  
21 water meters specifically which is what is at issue in  
22 this case including um for necessary maintenance but  
23 also upon its own discretion for things such as  
24 upgrades.

25 Here, the upgrade um in question was

1 something called an upgrade to e-coder technology  
2 which the authority began using in approximately 2007  
3 um which allows the authority to take readings from  
4 the meter from the street rather than having to enter  
5 onto the property and go to a port on the side of the  
6 home to take a meter -- a reading, sorry, from the  
7 meter which in this case is located in the basement  
8 but inside the dwelling.

9 Throughout um 2014, '15 and '16, um, the  
10 Water Authority provided numerous notices, eight  
11 letters to be exact, six of which provided that water  
12 service could be terminated and three of which were  
13 actually sent by certified mail.

14 THE COURT: None of those letters -- correct  
15 me if I'm wrong, but other than the final notice that  
16 was left on March 1 of 2017, none of those letters  
17 said that the Water Authority would terminate service.  
18 They only said that it could terminate service.  
19 Right?

20 MR. MACRI: Um.

21 THE COURT: The only notice that said that  
22 the authority would terminate service was the March 1  
23 notice. It says failure to hear from you in ten days  
24 will result in the termination of water service.

25 MR. MACRI: Um.

1 THE COURT: Correct?

2 MR. MACRI: The letters referred to the  
3 section of the tariff um one section, and forgive me I  
4 don't know the date of the specific number, but that  
5 section of the tariff specifies that a failure to  
6 allow a change of the water meter can result in water  
7 service --

8 THE COURT: Can result.

9 MR. MACRI: Correct.

10 THE COURT: But not necessarily that it  
11 will. I mean, in terms of procedural due process and  
12 do you agree that the procedural due process, um,  
13 requires that the person be given adequate notice  
14 prior to termination. What happens after termination  
15 is not relevant to the procedural due process claim.  
16 Is that correct?

17 MR. MACRI: Well, what happens after the  
18 termination would be relevant to something like  
19 damages or --

20 THE COURT: Well, it might be relevant to  
21 damages, but it's not relevant to whether or not there  
22 was a procedural due process violation; isn't that  
23 right?

24 MR. MACRI: Um, yes. What happens after the  
25 termination, yes; um, however --

1           THE COURT: It might -- it might limit the  
2 damages, but it wouldn't undo the fact that if the pre  
3 termination notice is not sufficient, there's a  
4 violation; correct?

5           MR. MACRI: Um, that would be correct.

6           THE COURT: Okay.

7           MR. MACRI: However, it's the Water  
8 Authority's position that each of those notices  
9 including the in person discussions that Ms. Curto had  
10 at the Water Authority offices prior to termination  
11 were sufficient to inform her.

12           THE COURT: But these notices and  
13 discussions um went on for three years, I think. The  
14 first notice being sent in 2014 and then 2015 and 2016  
15 and then the final notice so I mean maybe they could  
16 have acted earlier but they didn't and I'm focussing  
17 only now on was the notice that Ms. Curto received um  
18 a proper um notice for purposes of procedural due  
19 process, and as you know, um, Judge Feldman --  
20 although that was on a motion to dismiss for failure  
21 to state a claim, but he -- he expressed some serious  
22 doubt as to whether that last notice was sufficient or  
23 whether any of the notices were sufficient, and I  
24 guess that's my concern even though this is now a  
25 motion for summary judgment.

1           MR. MACRI: The prior notices were not  
2 before Judge Feldman at that point in time since it  
3 was only a motion to dismiss. It was just the door  
4 tag notice. The conversations that happened in  
5 person, the notices by mail did not -- were not  
6 addressed on that motion. Um, however, it's my  
7 understanding that the initial -- after the initial  
8 set of letters termination did not occur because there  
9 was a difficulty locating the curb box hence why they  
10 started the process again.

11           THE COURT: Uh-huh.

12           MR. MACRI: And of course, it's not the  
13 Water Authority's intention to terminate water service  
14 and to give everyone a chance to address this, hence  
15 why they sent multiple notices and letters in attempt  
16 to get access to the property to allow the change the  
17 water heater.

18           THE COURT: Okay. Well, let's focus for a  
19 minute though on the -- the notice pursuant to which  
20 service was terminated and that's the March 1 notice,  
21 March 1, 2017. Right? Because that said if you don't  
22 contact -- failure to hear from you in ten days will  
23 result in termination of water service, and the  
24 service, that notice was left on her -- at her  
25 property on either March 1 or March 2. I think March

1 1, and the service was terminated on March 21. So --

2 MR. MACRI: Well --

3 THE COURT: -- how does that notice -- and  
4 your employee, you know, candidly admitted that he  
5 made a mistake when he checked the box application for  
6 service, but how is she supposed to know from that  
7 notice um that they want to come in and change her  
8 water meter?

9 MR. MACRI: Well, admittedly, the term  
10 service has multiple descriptions including such as  
11 maintenance and things like that, but Ms. Curto did  
12 not respond or call in response to that notice, but  
13 I'd also actually like to refer back to the letter  
14 notices that were provided, and it in fact does say if  
15 you do not contact, we will take steps to discontinue  
16 your water service. The may discontinue is just the  
17 language used.

18 THE COURT: Yeah, but they didn't. They  
19 didn't. They didn't take steps until the last notice  
20 was served and then they um -- then they did.

21 MR. MACRI: I -- the -- I mean, it's the  
22 authority's position that they did take steps. They  
23 sent these multiple letters. They went to the  
24 property to hang that tag notice. They attempted to  
25 contact her in person at the property. They discussed

1       it with her in person at the Authority Office. Um,  
2       those are all steps that they took prior to  
3       terminating and providing notice of potential  
4       termination and that they would in fact will  
5       discontinue.

6               THE COURT: Okay. All right. Um, anything  
7       else on the procedural due process issue?

8               MR. MACRI: If you can give me one second  
9       just to flip through here. Just I guess to address  
10      some points that were raised in Ms. Curto's papers,  
11      there's essentially two points that she makes. Um,  
12      one that the evidence that the authority has presented  
13      is fabricated, um, however, there's been no -- no  
14      evidence of that in this matter, and the only thing we  
15      have that to base it on is Ms. Curto's statement, and  
16      it would require the Court to accept that um multiple  
17      attorney -- multiple employees of the authority as  
18      well as their attorneys have engaged in a scene to  
19      fabricate evidence for this matter. Um, but also, she  
20      makes a statement that all of the prior notices and  
21      everything indicate that water service can be  
22      terminated are irrelevant and that some supplementary  
23      new further notice would be required by law. All  
24      that's required under the due process is that some  
25      minimum notice be provided prior to the loss of a

1 right or deprivation of a right, and as I noted, it's  
2 our position that all of the letters, the in person  
3 conversation and the door tag provide that notice.

4 THE COURT: Okay.

5 MR. MACRI: But that's all on that.

6 THE COURT: Okay. Let me um -- and you can  
7 sit down and you can come back when we talk about the  
8 other claims but for now I want to then hear from Ms.  
9 Curto just on the procedural due process claim. Ms.  
10 Curto? And you can -- yeah. You can remain at  
11 your -- at the table there.

12 MS. CURTO: The um letters that were sent um  
13 were certified mail, and according to their records,  
14 they were returned. So I did not receive them.

15 THE COURT: Are you saying you, um -- are  
16 you saying that you did not receive any of those  
17 letters?

18 MS. CURTO: I received, um, I believe two.

19 THE COURT: Which ones did you receive?

20 MS. CURTO: Um, I -- unfortunately, I -- I  
21 didn't um keep them because the first letter um was I  
22 believe in 2014 or 2015 and I went in and I um -- I'm  
23 sorry. The first time um I talked to a person on the  
24 phone, second time I went in, and both of those times  
25 I thought the letter had been resolved, um, and there

1 was a record where they in fact withdrew the meter  
2 change.

3 Um, as to the credibility, um, there is  
4 um -- there is just a lot. Anyways, um, their  
5 document 3 which is a meter service order and is dated  
6 in 1993. And in that um meter service order, they  
7 have included um that there was a actual reading on um  
8 March 21 of 2017, um, March -- I mean, yeah, March 1,  
9 2017, March 21, 2017, and one, two, three -- five  
10 entries, four from 2017 and one from 2016, and this is  
11 dated um February of 1993. They would have to be able  
12 to see into the future and know that these things were  
13 happening. Um, it's just their records are just  
14 bizarre.

15 THE COURT: Well, let me just ask you,  
16 ma'am. When you -- you did see the March 1, 2017,  
17 notice that was left on your door; right?

18 MS. CURTO: Yes.

19 THE COURT: Okay. What did you think that  
20 meant?

21 MS. CURTO: I thought it was another um  
22 funky mistake. It said that there was an application  
23 for service. I had interpreted that as meaning um  
24 that they had received an application for service from  
25 someone else because my application for service was

1 approved I think in 27, um, and I had previously been  
2 told twice that they would not talk to me about  
3 someone else's um account.

4 THE COURT: Okay. No, and the notice you  
5 got, that March 1, 2017 notice, that didn't have your  
6 address on it, did it?

7 MS. CURTO: It didn't have my name, my  
8 address, my account number, um, had no identifying  
9 information. The um -- I received it on the second.  
10 Um, there's -- I say he was there on the second. He  
11 says he was there on the second, but all their records  
12 which are incorrect says that he was there on the  
13 first. Um, I --

14 THE COURT: Okay. But in any event, when  
15 you got that, you didn't think it related to you --

16 MS. CURTO: No.

17 THE COURT: -- because it talked about an  
18 application for service and didn't have your name or  
19 your address on it; right?

20 MS. CURTO: No, no. There was no  
21 identifying information.

22 THE COURT: Okay.

23 MS. CURTO: Um.

24 THE COURT: And so it wasn't until your  
25 service was cutoff on March --

1 MS. CURTO: 21st.

2 THE COURT: -- 21st.

3 MS. CURTO: Right.

4 THE COURT: The next day you went into the  
5 Water Authority; right?

6 MS. CURTO: That's correct.

7 THE COURT: And what did you say to them and  
8 what did they say to you?

9 MS. CURTO: I showed the um receptionist the  
10 um green cardboard thing that was hanging from my door  
11 knob.

12 THE COURT: Yeah.

13 MS. CURTO: And said that um my water  
14 service was um illegally terminated, wrongfully  
15 terminated and the um -- there is no new customer.  
16 I'm the owner. You know, does this belong on somebody  
17 else's door knob? I don't know. I said but at this  
18 point I want my water restored either today and no  
19 later than tomorrow.

20 THE COURT: Uh-huh.

21 MS. CURTO: Um, I can't say for sure, um,  
22 but I believe -- and I left immediately. I believe  
23 she called either security or the police.

24 THE COURT: I'm sorry. She called you what?

25 MS. CURTO: She called either the security

1 guard --

2 THE COURT: Oh.

3 MS. CURTO: -- or the police man. She was  
4 on the -- after I made my demand, and I don't think I  
5 was belligerent or anything, but I was a little angry  
6 because I was without water and I wanted it back and I  
7 wanted it back now, and I thought this cardboard thing  
8 that was hanging on my door was just a bunch of --  
9 another, you know, pretext. So she got on the phone,  
10 and from what I could overhear, she was saying that I  
11 wouldn't leave and that she wanted someone to remove  
12 me or something to that effect. So I just -- I left.  
13 I didn't want any problem. You know? I -- I heard  
14 enough of the conversation. Like I said, I don't know  
15 if she was calling the building security, if she was  
16 calling Buffalo Police or what, but it didn't matter  
17 because I came there for one thing and that was to um  
18 demand that my water be restored. Um --

19 THE COURT: Okay. Okay. Thank you.

20 MS. CURTO: And you know, they -- at that  
21 point, I thought they had made -- there was negligence  
22 on their part that they had not -- maybe I thought  
23 they had gotten an application and they had somehow  
24 mis, you know, interpreted or they didn't verify it or  
25 there are other 20 Hazels in this area. I do get mail

1 from -- mine is 20 Hazel Court. There's a 20 Hazel  
2 Road. There's a 20 Hazel something else. So I didn't  
3 know but I did know that mine was -- I said illegally,  
4 I'm sure, terminated. And I left.

5 THE COURT: All right. Thank you. All  
6 right. Um, let's talk about the trespass claim, Mr.  
7 Macri, and then Ms. Curto, I'll hear from you.

8 MR. MACRI: With regard to the trespass  
9 claim, Your Honor, as I mentioned earlier, there's two  
10 sources of the authority's power at issue in this  
11 case, the Erie County Water Authority Act and the  
12 tariff. As we discussed, the tariff was consented to  
13 by Ms. Curto when she filed her application in 2006  
14 where she agreed to be served subject to the terms of  
15 the tariff as the same may be changed from time to  
16 time.

17 Throughout the entirety of her service from  
18 the Water Authority dating back to 1953 -- or 1957,  
19 sorry, the tariff has always provided that the um  
20 authority and its employees may enter onto the  
21 property for the purpose of maintaining and inspecting  
22 the -- its equipment to make sure that the water  
23 service, equipment, pipes, everything like that  
24 function for the benefit of the entire county of Erie  
25 County.

1           THE COURT: But does that apply after  
2 service has been terminated?

3           MR. MACRI: Well, if she had been demanding  
4 that service be restored, it would be our position  
5 that, yes, she was thought to comply with those terms,  
6 but even if that did not apply, there's still the Erie  
7 County Water Authority Act which by statute says that  
8 the authority can enter onto private lands again for  
9 the purpose of inspecting and maintaining its  
10 equipment.

11           THE COURT: Okay. Um --

12           MR. MACRI: And -- oh, sorry.

13           THE COURT: Oh. I mean, that's your  
14 argument; right?

15           MR. MACRI: That's the argument that the  
16 entrances onto the property were with consent and/or  
17 authorization by statute. Um, the other argument that  
18 is outlined in our papers and then to which we did not  
19 receive any reply is there's been no proof submitted  
20 of any damages that might have incurred as a result of  
21 this.

22           THE COURT: Okay. Thank you. Um, Ms.  
23 Curto, what about the trespass claim? Don't they have  
24 the right to come on the property to check their  
25 equipment?

1 MS. CURTO: The um -- that's -- that's not  
2 what they did. Um, on the second one they came, they  
3 hung the notice, they um walked across my property,  
4 um, then they came back. They exited my property.  
5 They talked to a neighbor. They came back onto the  
6 property, and this is after they had left the notice  
7 and then they left again. Um, on the 21st when they  
8 terminated my service, um, he came onto my property  
9 for um a few minutes. He left for a few minutes. He  
10 came back for a few minutes.

11 THE COURT: Well, no, but you weren't there  
12 that day. Right?

13 MS. CURTO: No.

14 THE COURT: So what's the source?

15 MS. CURTO: No. I was there. In fact, I  
16 video taped it with my cell phone through the window.

17 THE COURT: We don't have the video tapes;  
18 right?

19 MS. CURTO: Um, it's on my old cell phone.  
20 I can't get it off.

21 THE COURT: All right.

22 MS. CURTO: And your guards won't let me  
23 bring a cell phone in. Um, the March 2 incident where  
24 he came onto my property, um, and hung the notice on  
25 my inner door after he opened the storm door and was

1 walking all over and then left and then came back was  
2 on my um surveillance camera which is um also on my  
3 old cell phone. Um --

4 THE COURT: Okay. So I take it your  
5 position is that he stayed longer than he should have.  
6 Right?

7 MS. CURTO: Well, he left and then there was  
8 -- when he entered again, that's another trespass.  
9 Also, on um I think it's -- I think it was September,  
10 he came onto my property for the purpose to determine  
11 if my house was vacant. Um, that's what their papers  
12 say. Um, he came onto the property. He didn't um  
13 check to see if it was -- the valve was still off. He  
14 didn't check any meter readings or anything. Um, he  
15 walked in my backyard, um, and then he reported back  
16 that it appeared to be, um, vacant. It's not his job  
17 to determine if my house is vacant. Um --

18 THE COURT: Okay. All right.

19 MS. CURTO: Additionally, after he checked  
20 the valve at the street that it was off, he should  
21 have left, but no. He kept coming on and checking the  
22 exterior port which he claimed um -- on March 31, he  
23 claimed had been ripped off, but why -- why do you  
24 keep coming back, you know, week after week, month  
25 after month and keep checking and keep reporting that

1 it's been ripped off.

2 But coincidentally in 2018, he took a  
3 reading, a meter reading. How can you know if it's in  
4 fact torn off. I also accused in my paper that he  
5 tore it off. He didn't deny it. So there's -- the  
6 injury -- the injury I believe is the mere presence of  
7 them being on my property. There's no -- if they had  
8 a legitimate reason, they have no legitimate reason.  
9 My service is off. It's off at the curb.

10 After you check the curb box, they said that  
11 I could have bought some special tool and had it  
12 turned back on. That's not -- that's not probable  
13 cause. You know? If you say I did buy the tool and  
14 therefore I have to check the box to make sure you  
15 didn't use it, but no. I didn't buy no tool to um  
16 turn it back on. They had no reason to be checking.  
17 There was -- I mean --

18 THE COURT: Okay. All right. I have your  
19 position. All right, Mr. Macri. How about the  
20 takings claim?

21 MR. MACRI: Thank you, Your Honor. For the  
22 takings claim, there's a number of reasons why the  
23 claim fails. I don't want to bore the Court by  
24 reiterating anything in our papers, but I will  
25 highlight some of the summaries and none of which has

1       been responded to by Ms. Curto's reply or sur reply.

2               First, it's the authority's position that  
3       the termination was of Ms. Curto's own cause because  
4       of the failure to respond to the various notices, um,  
5       but the reason for the impetuous of the takings claim  
6       was a finding by Judge Scott on the motion to dismiss  
7       stage based on a statement that it was illegal to live  
8       in the property. There's been no evidence produced  
9       other than that one conclusory statement that it is  
10      illegal to live there, um, and even if the lack of  
11      municipal water could cause it to be illegal, there's  
12      other sources of water that she could have employed.

13              In addition, to show a taking, you have to  
14      show that the land was used for a public purpose, um,  
15      and the authority admits that other than its pipes,  
16      meters, um, reading material or reading equipment and  
17      things like that that are on the property, the curb  
18      box for example, it has no ownership interest in the  
19      property. Those are all basically underlying the  
20      property, and it hasn't taken anything or used it for  
21      any public purpose.

22              Um, last, there has to be -- in this case,  
23      it would have to be a showing of a regulatory taking.  
24      Um, there's no claim or proof that there's been any  
25      kind of occupation by the authority or actual physical

1 taking of possession of the land, um, and to show a  
2 regulatory taking, there's three factors that are  
3 considered by the Court none of which are met here.  
4 Um, the first um is that all economic loss -- or all  
5 economic use of the property needs to be lost. It's  
6 not just that the best or the preferred use of the  
7 property is lost. So even if it were illegal to live  
8 in the property which again we are not conceding but  
9 if it were that does not mean that all economic loss  
10 of the property is used. There is various other  
11 purposes the property could be used -- the property  
12 could be used for, and in addition, it would be a  
13 temporary loss of use because once the meter is  
14 replaced water service can be restored.

15 The two other factors are there must be a  
16 change in some sort of regulatory scene upon which the  
17 plaintiff relied. There's been no showing of that  
18 either because the regulatory scheme that was in  
19 effect here would be the tariff and the Water  
20 Authority Act, both of which have been consistent  
21 throughout the period of service of water service to  
22 Ms. Curto's property.

23 And then the last is whether it um the act  
24 was -- the act that was taken was pursuant to some  
25 sort of comprehensive rule that balances the public

1       benefits, and again, it's our position that the tariff  
2       um is exactly that. It's a comprehensive set of rules  
3       that ensures that the water um service for the county  
4       is operating efficiently, properly, safely so that all  
5       residents of the county can use it at their discretion  
6       subject to the terms of the tariff, of course. Um,  
7       given that that's the case, the last factor also does  
8       not weigh in favor of the taking.

9               THE COURT: All right. Thank you. Ms.  
10       Curto?

11              MS. CURTO: The health department as well as  
12       the building codes prevents um occupancy. The health  
13       department is the more problematic one. They will not  
14       um -- he didn't say what other sources of water, but  
15       um, they would not approve um bottled water. They  
16       would not approve um a well if in fact a well was  
17       feasible. Um, they would not um approve, I don't  
18       know, a water tank on your property. If there's  
19       municipal water supply, they require that you use it  
20       because it's the safest possible source, and without  
21       the health department approval, you can't live there.

22              Um, the building code also requires water.  
23       The property -- the intended purpose of the property  
24       is residential. I can't reside there. And according  
25       to um my research, if the government denies you the

1 use of your property, that is a taking. Um, as to um  
2 the meter replacement it's -- it's -- when I was in  
3 there talking to them in 20 um 16, they um claimed  
4 they could not read my meter because they didn't read  
5 it in 2014, 2015 or 2016. The reason was that their  
6 meter reader had heard a dog barking inside my house  
7 and was too frightened to come onto my property for  
8 three years to read the meter, and that's why they  
9 were going to terminate my service.

10 I offered to um place the 17-year-old blind  
11 poodle in a daycare, doggie daycare for the day if  
12 they would tell me when he was going to be there to  
13 read the meter, and um, that offer was rejected. They  
14 said that they needed access 24/7 without notice in  
15 case there was an emergency which came down to either  
16 I have to get rid of my dog and have no dogs or I -- I  
17 don't have water service. Um, I expressed my um  
18 disbelief in rather crude terms. I apologized, um,  
19 and I left.

20 The dog has been an issue it appears in 20  
21 of their records, and that's just ridiculous. Um, the  
22 elderly poodle has now deceased and I now have two  
23 dogs. Um, one of them is a Beagle the other is a  
24 German Shepherd, and um, I'm not giving up my dogs to  
25 um -- and I should not have to. Other people have

1 dogs. That's not a problem. I think it's just  
2 another pretext to deny me um water. It's just  
3 ridiculous.

4 THE COURT: All right. Um, I have your  
5 positions. I'm going to take another look at the  
6 papers. I will get a recommendation out as to these  
7 three remaining claims as to whether they should be  
8 dismissed or proceed to trial, and um, whatever I  
9 recommend obviously will be subject to further review  
10 by Mr. Judge Sinatra, but let me just say for  
11 everybody's benefit that um if any claims do survive,  
12 and I say this with all respect, I don't think they  
13 have very significant monetary value, and I think the  
14 case should be settled. But having said that, I will  
15 leave it to the parties as to whether you wish to  
16 settle the case or not. Thank you.

17 MR. MACRI: Thank you.

18 (Proceeding concluded at 2:38 p.m.)  
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**CERTIFICATE OF COURT REPORTER**

I certify that this is a true and accurate  
record of proceedings in the United States District  
Court for the Western District of New York before the  
Honorable Jeremiah J. McCarthy on October 26, 2022.

S/ Brandi A. Wilkins

Brandi A. Wilkins

Official Court Reporter